

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
KNOBLES SCIENTIFIC AND ANALYSIS, LLCC
For
Acoustical Analysis Study for Golden Cheek Warbler
MA 2200 NA190000136**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Knobles Scientific and Analysis, LLC ("Contractor"), having offices at P.O. Box 27200, Austin, Texas 78755.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be David Paul Knobles, Phone: 512-796-2090, Email Address: dpkknobles@Kphysics.org. The City's Contract Manager for the engagement shall be Lisa O'Donnell, Phone: (512) 972-1674, Email Address: Lisa.ODonnell@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform the services as provided in the Exhibit A – Knobles Scientific and Analysis, LLC Proposal dated 03/24/2019.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed the following for all fees and expenses. For year one (1) - \$19,200; for year two (2) - \$19,300; for year three (3) - \$19,400; for year four (4) - \$19,500; and for year five (5) - \$19,600. The Contractor shall be paid an amount not-to-exceed \$97,700 for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Water
Attn:	Wildland Conservation /BCP Division
Address	3621 South FM 620 Road
City, State, Zip Code	Austin, TX 78738-6807

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate

Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 Reimbursable Expenses. Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.5.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.5.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 Final Payment and Close-Out.

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for a term of five (5) years.

4.1.1 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place

Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance.** Waived (see waiver on file in the Purchasing Office).

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.4 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.5 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.6.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.6.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.7 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.8 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 Compliance with Health, Safety, and Environmental Regulations. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 Significant Event. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 Audits and Records.

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered

by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: John Besser, Procurement Specialist III

P O Box 1088

Austin, TX 78767

To the Contractor:

Knobles Scientific and Analysis, LLC

ATTN: David Paul Knobles, Contract Manager

P. O. Box 27200

Austin, TX 78755

7.10 **Confidentiality**. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising**. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees**. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities**. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts**. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor**. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's**

MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 Jurisdiction And Venue. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm.

Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 **Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.29 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.29.1 any exceptions to the Offer accepted in writing by the City;

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

Knobles Scientific and Analysis, LLC

By: David Knobles
Signature

Name: David Knobles
Printed Name

Title: owner

Date: 06/04/2019

CITY OF AUSTIN

By: [Signature]
Signature

Name: John Besser
Printed Name

Title: Procurement Specialist III

Date: 6/7/2019

List of Exhibits

Exhibit A Knobles Scientific and Analysis, LLC Proposal dated 03/24/2019 (“Contractor’s Proposal”)
Exhibit B Non Discrimination Certification, Section 0800

I. INTRODUCTION

A. Title: *Acoustic measurement and analysis of Golden-cheeked warbler signatures in the presence of anthropogenic noise*

B. Date of Proposal: 3/24/2019

C. Investigators:

[David P. Knobles, Ph.D.](#)

Owner: Knobles Scientific and Analysis, LLC

P.O. Box 27200

Austin, Texas 78755

Phone: 512-796-2090

FAX: 512-453-2788

Email: dpknobles@Kphysics.org

[Preston S. Wilson, Ph.D.](#)

Raymond F. Dawson Centennial Fellow in Engineering

Mechanical Engineering Department

The University of Texas at Austin

204 East Dean Keeton Street

Mail Stop: C2200

Phone: 512-475-9093

Austin, Texas 78712-0292

Fax: 512-471-8727

D. Abstract - Preliminary analyses of a 2017-2018 study of acoustic measurements made in Emma Long Metropolitan Park (ELP) and a location off RM 2222 suggests that Golden-cheeked Warblers (GCWA) may have a sensitivity to prolonged exposure of anthropogenic noise emitted from various types of gasoline-driven engines. However, an insufficient amount of data has been analyzed to draw meaningful statistical inferences that could identify a correlation between the anthropogenic noise and possible adverse effects on the GCWA. Proposed are new measurements and analyses for 2019-2023 with acoustic recorders in the Balcones Canyonlands Preserve (BCP) and various roadways for the purpose of measuring anthropogenic noise and its possible effects on GCWA. To create a larger data sample size, acoustic recorders will be placed at 10 locations within ELP during 2019-2020 to measure both sound pressure levels and the temporal duration of various classes of motorized vehicles operating during GCWA vocalizations over an extended time period. Two arrays of recorders will be placed off RM 2222 from 2020-2022 to measure the number of GCWA vocalizations as a function of the sound levels that result from the road traffic, along with the integrated acoustic intensity of the dawn and evening avian and insect choruses to establish the more general picture of the soundscape in which the GCWA exists and the possible effects of anthropogenic noise on the full spectrum of species that contribute to that soundscape.

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E. Research Objectives

Research Objective 1: Evaluate the number and duration of GCWA songs in response to increasing motorized vehicular activity, including single and small groups of vehicles in Emma Long Park (ELP), two-lane roads in ELP, and RM 2222. Also, establish a threshold sound level in dBs and exposure time that cause the GCWA to, for example, stop singing. This mean threshold value along with confidence levels about the mean will in part be determined by comparing the number and duration of GCWA vocalizations at locations where motor vehicles operate to a control site where motor vehicles are not operated. These threshold values can then be used to help develop protective measures to reduce sound levels and durations. The proposed recorders will be strategically placed in ELP to maximize the potential to accumulate a sufficiently large data sample when combined with the previous recordings made in 2017-2018. The recorders off RM 2222 will be placed in an array geometry to test whether or not more GCWA songs of longer duration are present in areas without vehicles and/or farther away from roadway noise, which if true would suggest avoidance behavior by the GCWA. This would in itself quantify the sound levels and duration that correlate with an adverse effect on the GCWA. The data taken during 2017-2018 have not been fully analyzed and when completed should provide a larger number of data points in the histograms shown in Figs. 6-7 in Sec. II.B. The data will be grouped such that instead of all the data samples going into a single histogram, as done in Figs. 6-7 in Sec. II.B., subsets of data will be analyzed, such as those that correspond to both a high level transient due to a motorized vehicle and a “loud” GCWA vocalization close to the recorder. Then, the histograms will convey more specific information for cases where both the GCWA and the motorized vehicles are in close proximity. An additional two years of data will be recorded at ELP which will then provide a total of 4 years of data for the ELP region and three years of data will be recorded along RM 2222. Three to four years of data at each location (RM 2222 and ELP) should provide a sufficient sample size and allow for annual variation.

Research Objective 2: Evaluate the acoustic intensity of avian vocalizations and species richness from dawn and evening choruses in response to highway noise. The acoustic intensity of the dawn chorus (about 20 minutes in duration) [1-2] is a parameter that provides an overall measure of the number of birds (of all species) in a given area (approximately 200 square meter area). We will monitor the acoustic intensity of the dawn chorus in the array of recorders off RM 2222. If these values decrease with increasing motor vehicle noise in the same general region, then this becomes a methodology to evaluate the effect of anthropogenic noise on the avian community.

Research Objective 3: Evaluate the acoustic intensity of “singing” insect vocalizations and species richness in response to highway noise. The total number of insects are decreasing world-wide [3] and recording the total acoustic intensity and diversity of insect acoustic vocalizations is a means by which their numbers can be monitored and thus ecological decline in general. We will monitor the acoustic intensity of insect choruses in the array of recorders off RM 2222. If this value decreases with increasing motor vehicle noise in the same general region, then this becomes a methodology to evaluate the effect of anthropogenic noise on the “singing” insect community and overall ecological health.

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II. OVERVIEW –

A. Statement of issue – The issue is whether anthropogenic noise has adverse effects on GCWA populations. Of specific interest are the possible effects on the GCWA resulting from sound emissions from small groups of very loud motor vehicles and the continuous background noise that results from heavy road traffic.

B. Background-

We conducted a pilot study in 2017-2018 to collect acoustic measurements and develop a methodology for determining whether anthropogenic sound adversely affects GCWA populations. The measurements included data collected in areas where the anthropogenic soundscape included high level **transients** (emitted sound radiation with short time durations) from single to small groups of motorized vehicles, and areas where the anthropogenic soundscape is characterized by a **continuous** form of sound radiation that results from persistent and heavy road traffic such as that on RM 2222 and Loop 360. The analyses of these data are thus far inconclusive due to too small of sample sizes for cases where there is a GCWA vocalizing in the presence of these noise sources. This motivates this proposed work to expand the measurements to locations within the BCP that would increase the sample size so that meaningful statistics can be performed.

Figure 1 shows an example of three loud short duration loud acoustic events (**high level transients** (HLT)) in Emma Long Park (ELP) measured in the Spring of 2018. The source was a motorized vehicle and the acoustic recorder was about 50 meters from the receiver. The corresponding spectrogram shows that the acoustic energy is spread over the full 12 kHz band, unlike the passage of a passenger jet that has the majority of its acoustic intensity below 2 kHz.

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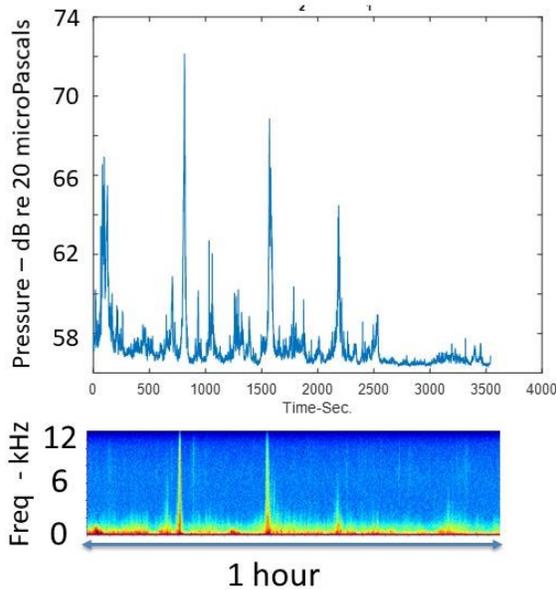


Figure 1: Acoustic pressure and spectrogram measured at Site 4 during a 1- hour interval at Emma Long Park Site 4 that shows three loud transients from passing motorized vehicles.

While HLT (< 30 seconds) are a large component of anthropogenic noise at six of the eight 2017-2018 sites at ELP, an even larger component is that due to sound emissions having a longer time duration from the same type of motorized vehicles that produce the transients. We refer to these as Low-Level Transients (LLT) with large time duration. These signals result from single to multiple motorized vehicles in a small area over an extended time period and can have time durations of minutes to several hours with highly variable levels at a specific location. Figures 2-4 show spectrograms of these LLTs (and also HLTs) that result from motorized vehicles remaining in the proximity of an acoustic recorder over an extended period of time. Low levels from the motorized vehicles can occur that extend over a period of 1 hour.

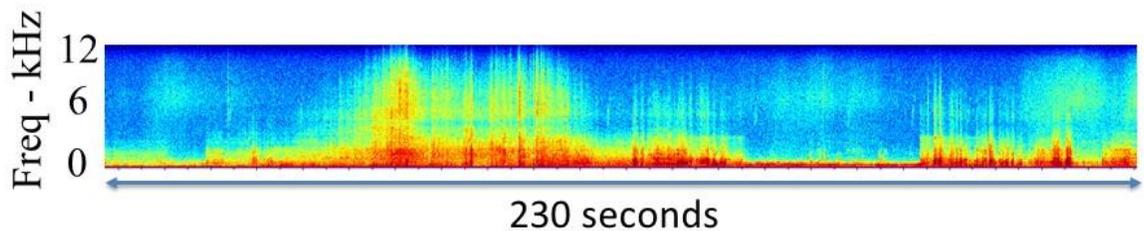


Figure 2: Spectrogram of acoustic field measured at Site 4 of ELP that show a longer and more persistent noise due to motorized vehicles

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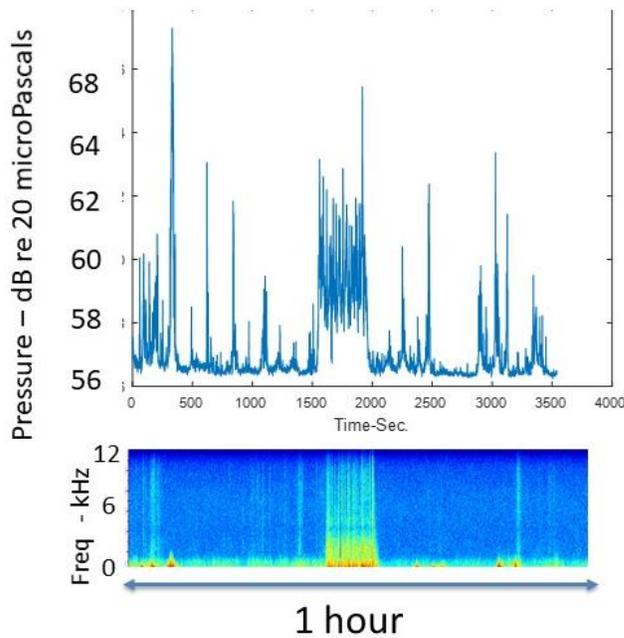


Figure 3: Acoustic pressure measured at ELP during a 1-hr interval and corresponding spectrogram showing both HLT and LLTs with longer time durations.

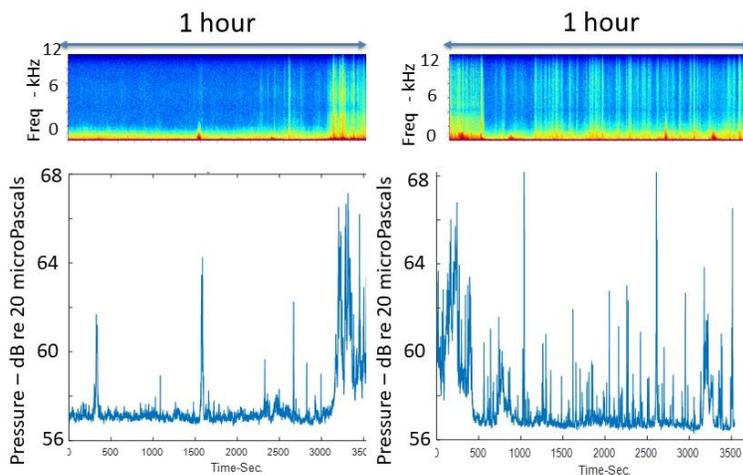


Figure 4: Acoustic pressure measured at ELP during a 2-hr interval that show the presence of LLT and HLT during a 1600 sec interval .

There are two obvious questions that emerge from these studies. How loud does a transient need to be to disturb a GCWA? What are the sound levels and time duration of emitted sound that cause

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adverse effects on GCWA? As a guide, in 1998 a large number of pilot whales beached themselves in the Bahamas, and it was immediately suspected that a U.S. Navy ship operating a 53-C active sonar was the culprit. Since that time the Navy has funded rather continuously research that attempts to define threshold sound levels that lead to adverse effects in marine mammals [4-8]. For example, these studies have now established approximate sound levels that can cause temporary threshold shifts (TTS) and permanent threshold shifts (PTS) for a wide variety of marine mammals and fish. These studies are used in part to define the protocol for the Navy to use its sonars, and for ocean acousticians to perform their experimental research in the form of environmental impact statements, permit applications, and experimental planning that places restrictions on both the sound levels and their durations for specific locations and season of the year.

While there have been studies on the effect of road traffic and other types of anthropogenic noise on avian species [9-14], there are only a few specific studies that have been made on sound levels and duration that lead to adverse effects for the GCWA [15-17], so it is difficult to estimate the amount of data that needs to be collected. With the issue of the scarcity of specific studies for the GCWA in mind, we present some initial attempts that utilize the acoustic measurements made in the BCP and off RM 2222 during 2018 where there were both GCWA signatures and anthropogenic noise. Figure 5 shows a measured spectrogram at ELP where there is both an HLT and a string of Type A GCWA signatures. This is an example of where the GCWA continues to sing in spite of the HLT. Some of the cases show the opposite, namely they show the GCWA stops vocalizing in the presence of an HLT.

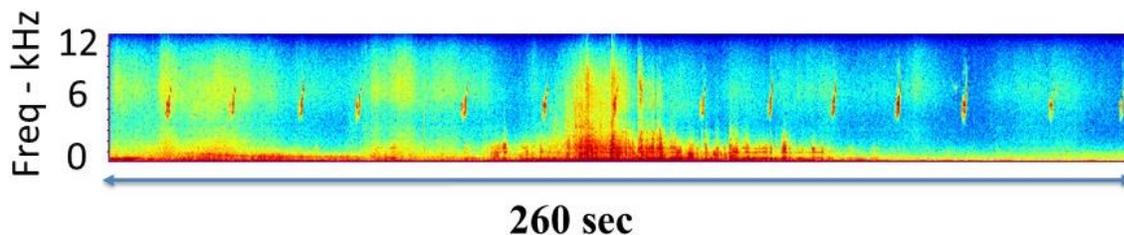


Figure 5: Spectrogram of acoustic field measured at ELP that shows GCWA singing a Type A song that persists through an HLT.

Such observations led to a more extensive analysis of the acoustic data at the six ELP sites that looked for the subset of data samples where there was both a GCWA vocalization and HLTs or LLTs present. From this subset a binary (yes/no) inference was made as to whether or not the GCWA stopped singing. Also, if the GCWA did stop singing, how long had the subject been singing prior to the arrival of the HLT or the LLT, and whether or not they returned after a specified time period.

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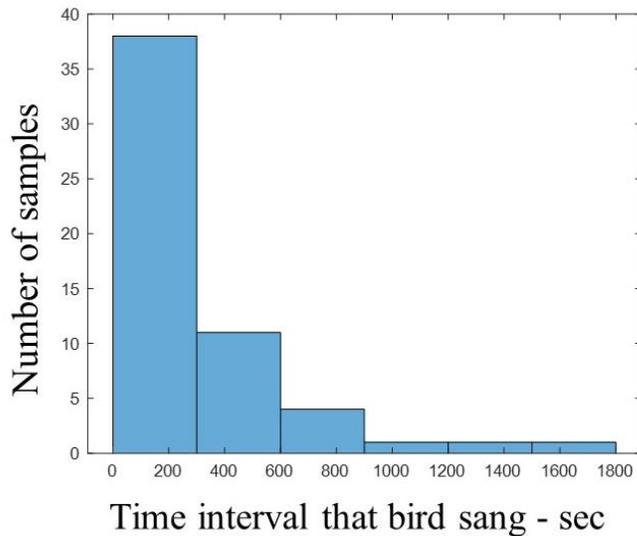


Figure 6: Time interval bird sang before stopping in presence of HLT and LLT

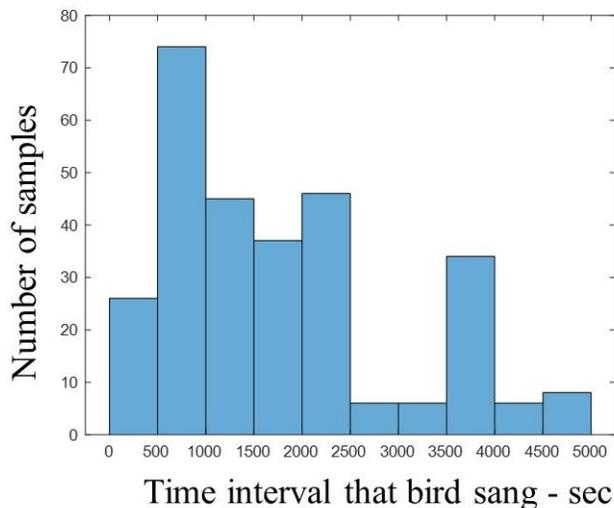


Figure 7: Time interval bird sang and did not stop in presence of HLT and LLTs.

Figures 6-7 summarizes these analyses. Figure 6 is a histogram of the number of data samples for all six sites from the end of February to the end of April 2018 that show cases where the GCWA stopped singing when there was either an LLT or an HLT. The data combine both Type A and B signatures. Separating into individual Type A and Type B histograms would likely be helpful. These histograms include all cases where the received levels of both the GCWA and transient were “low”, “medium”, and “loud”. Figure 7 is the same as Fig. 6, except it includes cases where the GCWA continued to sing. Figure 6 suggests that for cases where the GCWA had only been singing for 300 sec. or less, the likelihood was that they would stop singing in the presence of a loud transient. Figure 7 suggests that if a GCWA had been signing for a period of > 500 seconds the

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likelihood was that they would continue to sing in the presence of a sound emissions of a motorized vehicle. One observes from Figs. 6-7 that the total number of data samples where both GCWA and a transient anthropogenic source was present was less than 300. While Figs. 6 and 7 are suggestive, they should not be considered as definitive in answering the question as to whether or not HLTs and/or LLTs can stop GCWA vocalizations, because this is an under sampled subset of data.

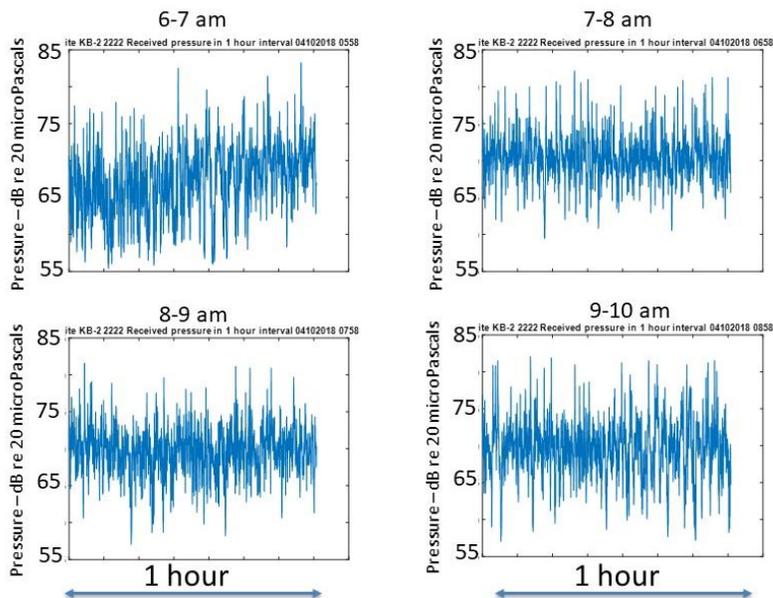


Figure 8: Acoustic pressure measured at a location about 30 meters from RM 2222 from 6-10 am on a weekday.

Figure 8 shows the sound pressure levels over a 4-hour period for a location off RM 2222 about 30 meters from the road. These sound levels are not transient in character but rather are described by a continuous reception of levels that have peak values on the order of 80 dB. No GCWA vocalizations were observed at this specific area. It was only after the recorder had been relocated to an area about 90 meters from the road did one observe GCWA vocalizations. Again, while suggestive that GCWA are adversely affected by the continuous sound levels shown in Fig. 8, there needs to be a greater number of data samples to make definitive conclusions, and to also establish threshold sound levels above which a GCWA is adversely affected.

C. References for Overview:

1. Jamieson, Barrie Gillean Molyneux (editor) (2007) *Reproductive Biology and Phylogeny of Birds: Sexual selection, behavior, conservation, embryology, genetics* (Part B of *Reproductive Biology and Phylogeny of Birds*) Science Publishers, Enfield, New Hampshire, page 183, ISBN 978-1-57808-386-2.

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2. M. Ceraulo, C. Bobryk, N. Piereti, E. Quinci, and E. Lattanzi, “Spatial and temporal variation of bird dawn chorus and successive acoustic morning activity in a Mediterranean landscape,” *International Journal of Animal Sound and its Recording* 24, 2015. |
3. Francisco Sanchez-Bayo and Kris A. G. Wyckhuys, “Worldwide decline of the entomofauna: A review of its drivers,” *Biological Conservation* 232, 8-27 2019. National Marine Fisheries Service (2016).
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III. OBJECTIVES/HYPOTHESES TO BE TESTED –

Based on the discussion in Sec. II, we propose to increase the number of data samples to provide meaningful statistics on the following questions:

- 1) Does transient noise interrupt GCWA song? Again, Figs. 6 and 7 are suggestive, but statistically inconclusive.
- 2) If transient noise does not *generally* interrupt GCWA song, is there a minimum distance and/or maximum decibel level beyond which it does?
- 3) Does persistent anthropogenic noise result in fewer GCWA songs? Again, *preliminary* analyses suggest it does, but this should also be tested with a greater number of data samples
- 4) Is there a threshold length of time beyond which anthropogenic noise becomes “persistent” and affects GCWA vocalization?
- 5) Is there a threshold decibel level at which persistent anthropogenic noise affects GCWA vocalizations?

IV. METHODS -

A. Description of study area

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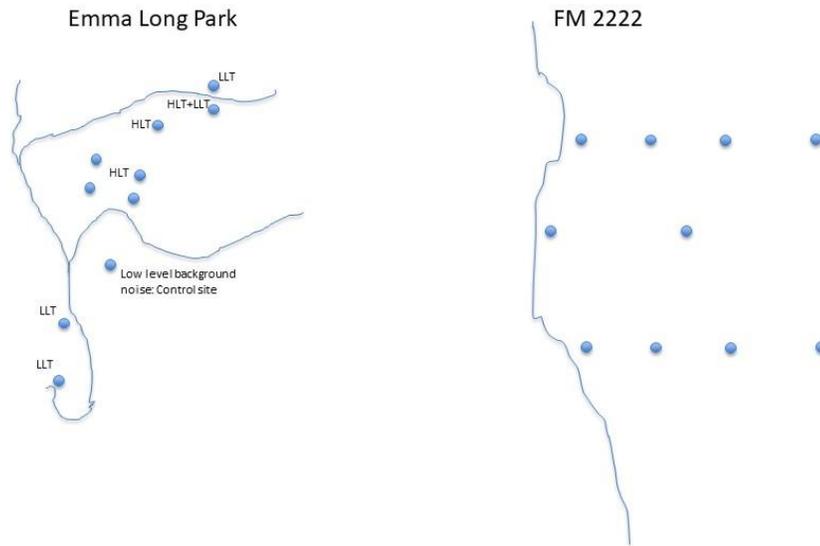


Figure 9: Notional deployment of acoustic sensors at (1) Emma Long Park to measure GCWA vocalizations in the presence of High-Level Transients (HLT), Low Level Transients (LLT), and (2) continuous high-level road traffic off RM 2222.

Figure 9 shows a notional deployment for 10 acoustic sensors in ELP. Four sensors in the center are in a high-density region of where HLT are emitted. This is an increase by a factor of two the number of sensors in this specific region to try and increase the sample size of capturing GCWA vocalizations in the presence of HLTs. There are also recorders placed along City Park Road and Pierce Road where historically GCWA are active. This should allow in the increase of data samples that include individual cars and trucks during time periods when there is a GCWA that is vocalizing. The deployment scheme for RM 2222 is different in that 4 hydrophones are grouped in a line which is perpendicular to the road. In this way one can measure the total number of GCWA vocalizations as a function of the distance to the road or in other words the number of vocalizations as a function of sound levels (at four discrete points). This experimental design is repeated at an additional location along with two other sensors between these two line arrays.

B. Procedures – The experimental design is shown in Fig. 9. The essence of a good experimental design is that it is correlated with the inferences one is attempting to make concerning the measured acoustic data. We believe that the sensors are placed in near optimal positions to capture the diversity of the emitted transients in different GCWA territories that will provide the desired statistics within the histograms shown in Figs. 6-7.

C. Collections – We are only collecting acoustic data and will not collect specimens of avian species.

D. Analysis – We will include data taken from 2017-2020 for all days of the week in order to gain an adequate sample size where both GCWA are vocalizing in the presence of a motor vehicles.

E. Schedule – The schedule is to deploy 10 sensors at ELP from early March to early May during 2020 and to then deploy the line arrays off RM 2222 from March to early May from 2020-2022.

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Work Plan for Years 1-2 for Emma Long Park:

- May-November 2019-2020: Analyze data from 9 recording units at sites with individual or small groups of motorized vehicles and 1 recording unit in an adjacent site with low noise as controls, prepare manuscript for submission to peer-review journal.

Work Plan for Years 2-4:

- Along RM 2222: place two arrays of recording units of four units each next to the road and at increasing distance, approximately 100 m apart from the road.

Work Plan for Year 5 Make additional measurements as needed to increase the data sample size Analyze data from Years 2-4. Prepare manuscript for submission to peer-review journal.

Deliverables – provide an interim report by November 15 of each year, collaborate with City of Austin BCP staff to prepare manuscripts for peer-reviewed journals based on each objective.

F. Budget

For one year

David Knobles, Ph.D (Prime contractor , KSA, LLC)

Total man hours = 50

Base Rate \$ 75/hour

Total = \$ 3,750

Preston Wilson, Ph.D.

Total man hours = 50

Base Rate \$ 75 /hour

Total = \$ 3,750

Subtotal Wilson and Knobles: \$ 7,500

A. Matt Zey (Subcontractor B)

Total man hours = 150

Base Rate \$ 20 per hour

Total = \$ 3,000

B. Gabe Venegas (Subcontractor C)

Total man hours = 150

Base Rate \$ 20 per hour

Total = \$ 3,000

C. Ian Knobles (Subcontractor D)

Total man hours = 250

Base Rate \$ 15 per hour

Total = \$ 4,500

Subtotal: \$18,000

Supplies

March 13, 2019

Memory Cards \$ 500

Removable Disks \$ 500

Batteries \$ 200

Total supplies \$1200

Total 1-year budget: \$ 19,200**To account for a small amount of inflation, we increase the yearly budget by \$100 each year to 2023****Total 5-year budget for 2019 – 2023: \$97,000****To account for a small amount of inflation, we increase the yearly budget by \$100 each year to 2023****Total 5-year budget for 2019 – 2023: \$97,000**

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V. PRODUCTS

A. Publications and reports – A progress report will be provided by November 15 of each year and a final report will be submitted by November 15, 2023, in addition to two publications in peer-reviewed journals (in collaboration with City of Austin BCP staff).

B. Collections – Acoustic data will be owned by the City of Austin. The data format is standard **.wav** files with a sampling rate of 24 kHz unless otherwise specified. For example, for GCWA recordings 12 kHz is sufficient to capture the full bandwidth of their vocalizations, however for insects such as crickets, one needs a 24 kHz band (and thus 48 kHz sampling rate) to capture all species.

VI. QUALIFICATIONS

David Paul Knobles received his Ph.D. degree in nuclear theory in 1989 from the University of Texas at Austin. From 1989 through 1992 he did a post-doctoral fellowship in nuclear physics at the University of Texas at Austin. He was a research scientist at The Applied Research Laboratories, The University of Texas at Austin from 1980-1985 and 1992-2016. Currently he is owner of Knobles Scientific and Analysis (KSA), a private business that specializes in defense and environmental applications. He has been a principle investigator in the Ocean Acoustics Program at the Office of Naval Research since 2002. He has taught graduate courses at UT-Austin in methods of mathematical physics and ocean acoustics and is a Fellow of the Acoustical Society of America. His research interests include theoretical physics, remote sensing, cosmology, and bioacoustics. He is currently serving as co-chief scientist for the ONR Seabed Characterization Experiment and acts as the prime contractor for three contracts in machine learning and solving the ocean acoustics inverse problem that several universities and larger defense industries as subcontractors.

Dr. Wilson is a Professor in the Acoustics and Dynamic Systems & Control programs of the Mechanical Engineering Department, holds a joint appointment as a Research Professor at Applied Research Laboratories, The University of Texas at Austin and is the Raymond F. Dawson Centennial Fellow in Engineering. Wilson obtained the PhD degree in Mechanical Engineering from Boston University in 2001, and the MS and BS degrees in Mechanical Engineering from the University of Texas at Austin, in 1994 and 1990, respectively. He joined the Cockrell School of Engineering faculty in 2003 after serving as a Post-Doctoral Research Fellow at Boston University, where he studied sound propagation and scattering in bubbly liquids, and the acoustics of water-saturated marine sediments. Previous experience also includes 3 years as a research engineer at Applied Research Laboratories, The University of Texas, 1994–1997, where he studied the acoustics of marine mammal sonar, developed a seismoacoustic mine detection sonar, seismoacoustic vehicle detection sensors and the Combustive Sound Source (a safe and inexpensive alternative to explosive sound sources for use in ocean surveys and seismic prospecting). In 2004, Dr. Wilson received the Office of Naval Research Entry-Level Faculty Award in Ocean Acoustics and in 2007 received the A.B. Wood Medal and Prize from the UK Institute of Acoustics. Since 2009, Wilson has been the Chair of the Education in Acoustics Committee within the Acoustical Society of America, currently serves as an associate editor for the Journal of the Acoustical Society of America and is a past-President of the Austin Regional Chapter of the Acoustical Society of America. Dr. Wilson's current research interests are ocean acoustics, physical acoustics and engineering acoustics, with concentrations on sound propagation and scattering in the ocean and in multiphase media, animal bioacoustics, novel acoustic

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materials, metamaterials, and transduction. Wilson also works in the area of underwater anthropogenic noise abatement using large encapsulated bubbles and is studying the use of acoustics and sonar technology in the firefighting environment. Another area of interest is vibration control, focusing on the use of nonlinear systems such as buckled beams and other negative-stiffness structures. Specific details are provided on Wilson's personal webpage [<http://www.me.utexas.edu/~pswilson>]. Work conducted in the Wilson group has been reported in *Scientific American*, *National Geographic*, *The Alcalde*, *The Austin Business Journal*, and via radio reports on KUT and NPR. Wilson co-founded AdBm Technologies, Inc, to commercialize underwater noise abatement technology and currently serves as a science advisor to the company, which provides underwater noise abatement solutions for the domestic oil and gas market and the international marine wind and offshore construction markets. Wilson currently holds six US patents.

Both Dr. Knobles and Dr. Wilson have spent the previous three years deploying acoustic recorders and analyzing data in the BCP.



MEMORANDUM

TO: Greg Meszaros, Director

FROM: Sherri L. Kuhl

DATE: April 4, 2019

SUBJECT: Acoustic measurements and analysis of avian and insect soundscapes in response to anthropogenic noise within the Balcones Canyonlands Preserve

Please find attached a Purchase Request Form, purchasing questionnaire, and research proposal to fund a 5-year study to evaluate effects of anthropogenic noise on Golden-cheeked Warblers within the Balcones Canyonlands Preserve (BCP). More details are in the attached memo and other forms.

This is the continuation of a Professional Service initiated in 2017 and requires your signature on the attached memo to the Purchasing Office. Thank you for your consideration.

Sherri L. Kuhl, Division Manager
Wildland Conservation Division

Daryl Skusher, Assistant Director

ec: Nico Hauwert, BCP Program Manager
ec: AW PUR Dept., Pamela Jay





City of Austin | Austin Water
P.O. Box 1088 Austin, TX 78767
AustinWater.org

MEMORANDUM

TO: Georgia Billela, Procurement Specialist III, Purchasing Office

DATE: 4/4/2019

SUBJECT: Acoustic measurement and analysis of Golden-cheeked warbler signatures in the presence of anthropogenic noise within the Balcones Canyonlands Preserve Professional Service Exempt

The Austin Water Department declares this project to be professional service exempt from Texas Local Government Code, Chapter 252.022 (a) (4) since the service being provided is of an intellectual nature, requiring special knowledge, experience, education and skills.

Following a 2-year pilot study, we are requesting approval to proceed with a second Professional Services Agreement (PSA) with Knobles Scientific Analysis, LLC, to continue to evaluate potential effects of anthropogenic noise on Golden-cheeked Warbler singing behavior. The primary objective is to evaluate Golden-cheeked Warbler vocalization responses to increasing motorized vehicular activity, including single and small groups of vehicles, two-lane roads, and highway (RM 2222). In addition, the project will evaluate the acoustic intensity of other avian and "singing" insect vocalizations and species richness in response to highway noise. Results from the initial PSA have been promising, and we are hopeful this novel method can be used to help develop protective measures to reduce sound levels and durations. The Golden-cheeked Warbler is one of the endangered species covered under the City of Austin/Travis County federal endangered species permit that established the Balcones Canyonlands Preserve. Monitoring and management are permit requirements to ensure species protections. While habitat loss is the greatest threat to the Golden-cheeked Warbler, anthropogenic noise may also have an adverse effect.

If you have any questions, please contact Nico Hauwert at 512-972-1661.



Greg Meszaros, Director
Austin Water

ec: Nico Hauwert, BCP Program Manager
AW, Wildland Conservation





City of Austin Purchasing Office

Certificate of Exemption for Professional Services, Public Health and Safety or Other Exempt Purchase (Non-Competitive)

Date: 4/4/19 Dept.: Austin Water
To: Georgia Billela, Procurement Specialist III From: Nico Hauwert, BCP Program Manager
Purchasing POC: Phone: 512-972-1661

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure unless the expenditure falls within an exemption listed in Section 252.022.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

The City has selected a vendor for contract award and declares the competitive solicitation procedures in Local Government Code Chapter 252.022 to be exempt for this procurement. This Certificate of Exemption is hereby executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this request:

- A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of a municipality.
- A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
- A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
- A procurement of personal, professional, or planning services
- Other exemption from Chapter 252.022: _____

2. Describe this procurement

- What it is for and why it is needed?

Following a 2-year pilot study, we are requesting approval to proceed with a second Professional Services Agreement (PSA) with Knobles Scientific Analysis, LLC to continue to evaluate potential effects of anthropogenic noise on Golden-cheeked Warbler (GCWA) singing behavior. The primary objective is to evaluate GCWA vocalization responses to increasing motorized vehicular activity, including single and small groups of vehicles, two-lane roads, and highway (RM 2222). In addition, the project will evaluate the acoustic intensity of other avian and "singing" insect vocalizations and species richness in response to highway noise. Results from the initial PSA have been promising, and we are hopeful this novel method can be used to help develop protective measures to reduce sound levels and durations. The GCWA is one of the endangered species covered under the City of Austin/Travis County federal endangered species permit that established the Balcones Canyonlands Preserve (BCP). Monitoring and management are permit requirements to ensure species protections. While habitat loss is the greatest threat to the GCWA, anthropogenic noise may also have an adverse effect.

- Describe the following (as applicable):
 - **For Public Calamity, Public Health and Safety, Unforeseen Damage to Public Machinery or Equipment, or Critical Business Need Exemptions:**
 - Provide description of the event leading to the procurement and a business justification for this purchase.
 - What would be the impact to department operations and the community if this purchase was not made?
 - How and why this vendor was selected?
 - **For Professional, Personal, or Planning Service Exemptions:**
 - Why is the vendor the most qualified to provide the services? Dr. Knobles initiated a pilot study on the BCP during the spring of 2016 to determine the feasibility of using acoustic field measurements to quantify the influence of anthropogenic sound on Golden-cheeked Warblers. He financed and executed this project himself. He continued this work under a 2-year PSA (2017-2019). This project is Dr. Knobles' original concept, and he is uniquely qualified to conduct this research.
 - Does this vendor have a history of working with the City? If so, was it on this particular service? Yes, see above. Dr. Knobles has been collecting and analyzing acoustical data in coordination with BCP biologists at Emma Long Park, Kent Butler Ecological Reserve, and Wild Basin since 2016.
 - Will this procurement be component of a larger service or phases of service? Yes, this procurement will continue work initiated at Emma Long Park in 2017 to allow for collection and analysis of an additional two years of data (4 years total), and three years of data along RM 2222, where responses of other avian species and "singing" insects to these different soundscapes will also be evaluated.
 - Is the vendor a City of Austin local vendor? Yes
 - Does the vendor hold an MWBE certification with the City, a HUB certification with the State of Texas, or any other minority or women owned certifications? No
 - What qualifications, certifications, or specialized training does the vendor have? David Knobles has a Ph.D. in theoretical nuclear physics. He is the author and co-author of over 40 papers in the peer-reviewed literature in the area of classical and quantum physics; especially in the area of wave propagation in inhomogeneous media and the solution to the statistical inverse problem. He recently introduced into ocean acoustics the idea of maximum entropy to infer probability distributions for ship detection and localization, aspect dependent source levels, and the properties of the acoustic waveguide. His current work is devoted to developing coupled statistical integral equations for applications of wave propagation in random media, the interaction of sound with a complex seabed, 3-D normal mode propagation, and

applying probabilistic machine learning methods to sonar decision making. He has taught graduate level mathematical physics and acoustic courses at UT at Austin and is a Fellow of the Acoustical Society of America.

- What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)? We risk loss of sufficient data collection and analyses needed to show a correlation between anthropogenic noise and GCWA response, and development of possible strategies to minimize these effects.
- What other vendors can provide these services and why are they not the best fit for the contract? As this project is Dr. Knobles' original concept, we are unaware of any other vendor who is conducting, or would be qualified to conduct, this type of work.

○ **For Other Exceptions from Chapter 252.022:**

- Explain the circumstances of the procurement.

○ **Prices were determined to be reasonable based on the following (select all that apply):**

- Prices are established under a current Cooperative contract.
Notes: At a minimum, note the contract number, contract title, cooperative entity, and government or entity who created the contract.
- Prices are the same or similar to current City contract.
Notes: We currently have a 2-year (2017-2019) PSA with Dr. Knobles; MA 5800 NA170000152
- Prices are the same or similar to current contract with another government.
Notes: At a minimum, note the contract number, title and government that created the contract.
- Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
- Prices are established by law or regulation.
Notes: At a minimum, note the legal or regulatory reference that established the prices.
- Other means of determining Price Reasonableness.
Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Place holder for department procurement description area

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- Scope of Work or Statement of Work (if applicable)
- Vendor's proposal/quote (if applicable)
- Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- Professional resumes, certifications, and/or licenses (Professional, Personal or Planning Services Only)
- Other supporting documentation

4. Because of the above facts and supporting documentation, the City of Austin exempts this procurement from Local Government Code Chapter 252 and intends to contract with:

(Vendor Name): Knobles Scientific Analysis, LLC for

(Description of Procurement):

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

This is a one-time request for \$

This is a multi-term contract request for 60 (# months for base term) in the amount of \$19,200/year (+\$100/each additional year) with 4 (# of renewal options) for \$19,200/year (+\$100/each additional year) each for a total contract amount of \$97,000.

Recommended
Certification

Nico Hauwert 4/11/19
Nico Hauwert, BCP Program Manager Date

Approved
Certification

[Signature] 4/15/2019
Department Director or designee Date

[Signature] 4/16/19
Assistant City Manager / General Manager Date
or designee (procurement requiring Council approval)

Purchasing Office
Review

[Signature] 6/3/2019
Authorized Purchasing Office Staff Date

Purchasing Office
Management Review

Purchasing Officer or designee Date

(If required due to signature authority level)

EXHIBIT B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 4th day of June, 2019

CONTRACTOR	KSA,LLC
Authorized Signature	<u>David Koebles</u>
Title	<u>owner</u>

City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: KNOBLES SCIENTIFIC AND ANALYSIS, LLCC

Signature of Officer or
Authorized
Representative:

David Knobles

Date: 06/04/2019

Printed Name: David Knobles

Title Owner
